

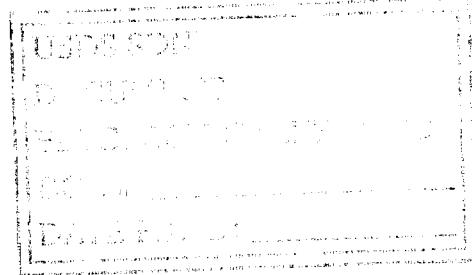


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November 30, 2012

By First Class Mail

Honorable Kenneth M. Karas
United States District Judge
United States Courthouse
300 Quarropas Street
White Plains, New York 10601



Re: Jeffrey Deskovic v. City of Peekskill, Putnam County, Westchester County, David Levine, Thomas McIntyre, Walter Brovarski, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, Louis Roh, Millard Hyland, Peter Insero and Legal Aid Society of Westchester County, Docket No. 07 Civ. 8150 (KMK) (GAY)

Re: Linda McGarr v. City of Peekskill, Westchester County, David Levine, Thomas McIntyre, Walter Brovarski, Eugene Tumolo, John and Jane Doe Supervisors, Daniel Stephens, George Bolen, Louis Roh and Millard Hyland Docket No. 07 Civ. 9488 (KMK) (GAY)

Dear Judge Karas:

We are counsel for the City of Peekskill, David Levine and Thomas McIntyre in the referenced actions. We are writing in response to the Order dated November 28, 2012, in which the Court ruled on various discovery issues. D.E. #542. The Order provides that "the only remaining discovery involves expert discovery as to damages." We respectfully submit that expert discovery should not be limited to damages issues, thereby precluding expert discovery as to liability issues.

Rule 26(b)(4)(A) of the Federal Rules of Civil Procedure provides: "A party may depose *any person* who has been identified as an expert whose opinions may be presented at trial." Fed. R. Civ. P. 26(b)(4)(A) (emphasis added). The rule does not limit expert discovery to damages experts only. Rather, a party may depose any expert disclosed "whose opinions may be presented at trial." *Id.* This Court's prior order, issued March 18, 2011 (D.E. #334), provides that "Deadlines for All Remaining Expert and Damages Discovery [are] to be Scheduled as Necessary Following Summary Judgment Decisions." The March 18, 2011 Order, similarly, does not contemplate that expert discovery would be limited to damages issues.

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Plaintiff has so far identified two experts: Dr. Saul Kassin, as an expert in false confessions, and Dr. Charles Honts, as an expert in polygraph examinations. We also understand that plaintiff is going to disclose an expert psychiatrist, economist, occupational therapist, and a police practices expert. While some of these experts will opine on damages only, many of them, including Dr. Kassin, Dr. Honts and whomever plaintiff retains as a police practices expert, will be providing opinions on liability issues.

Our recollection from the conference held November 27, 2011, is that plaintiff's counsel did not object to expert discovery, and that there was no discussion as to whether expert discovery would proceed only as to damages experts.

For the above reasons, we respectfully request that the Court reconsider and modify the discovery order to allow expert discovery to proceed without limitation to whether the expert is going to opine on issues of liability or damages. Such a modification would be consistent the scope of expert discovery authorized by Rule 26(b)(4)(A) and contemplated in the Court's prior order.

Respectfully submitted,

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

Lalit K. Loomba

Cc: (via -email):

All counsel of record

The Court ~~assumes~~ assumes it will
hear from Plaintiffs on ~~the~~ the
issues addressed herein within

the next week.

So Ordered.

12/4/12

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